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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, and statutory representation and maintenance of corporations, is to deal with members of the bar, exclusively.

The Delaware Supreme Court has reversed the decree of the Chancellor in *Keller et al. v. Wilson & Co., Inc.*, 180 A. 584. (See page 270.) Motion for reargument was made November 20 and briefs filed. It is expected the motion will be argued on November 30.

At the November election, the voters of California rejected Proposition No. 2, which provided for the repeal of the Personal Income Tax (Chapter 329, Laws of 1935) and for the amendment of the State Constitution to require individual income tax measures to become operative only after initiative proceedings or after submission to and approval by the electors. The referendum on the California Chain Store Tax law (Chapter 849, Laws of 1935), also failed to receive the approval of the voters.

In Colorado, where the Retail Sales Tax law (Chapter 189, Laws of 1935) was to have expired on June 30, 1937, the voters approved a measure extending the operation of the tax beyond that date until the law providing for the tax is specifically repealed or amended.

The South Dakota Chain Store Tax law was held invalid in its entirety by the Supreme Court of that state on November 17, 1936.

Raymond Kurman

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for December

Occupational License Taxes

EDWARD ROESKEN

In addition to the initial taxes payable upon the organization of a domestic corporation or the qualification of a foreign corporation, and the "annual" franchise taxes paid for the privilege of existing as a domestic corporation or for the right to do business within a state by a foreign corporation, there are certain annually recurring state, county and municipal "privilege" taxes imposed in each state for the privilege of engaging *in a particular type of business* within the state, county or city imposing such a "privilege" or "occupational license" tax.

In the Southern states, this type of taxation will be found imposed upon almost every conceivable occupation or business and is a source of considerable revenue to states, counties and municipalities.

In the Northern and Western states, however, the number of occupations taxed in this way is comparatively small and many businesses are not so taxed.

The state-wide occupational license requirements are imposed by state legislation, as are most of the county-wide requirements, and much of the collection and administration of these two types falls upon county officials, who, when collecting state license taxes, act as agents of the state.

The administration of occupational license taxes may be termed informal when compared to that of the state "initial," "franchise" and "income" taxes, as in many instances printed application blanks are not prepared and the licensing is then effected either through correspondence or by the mere payment of the tax due by the local agent of the taxpayer. Often, also, licenses are not actually issued, the receipt received serving that purpose.

Municipal occupational license provisions are found in the ordinances of the municipal legislatures. Such requirements may also be said to be far-reaching in most Southern cities and applicable to but a small number of businesses in the other sections of the country.

Municipal licenses accord the privilege of engaging in the given type of business only within the municipality, while county taxes permit carrying the business on within a particular county, and state occupational licenses grant the privilege of engaging in business at one or more points within the state. There are constitutional and statutory provisions in some states prohibiting more than one legislative body—state, county or city—from levying a license tax upon the same occupation, but it is frequently found that no such restrictions exist.

Domestic Corporations

Delaware.

Right to accrued dividends, on cumulative preferred stock which had been issued at a time when the law did not permit the abrogation of accrued and unpaid dividends against the consent of the holder, held a vested right. This vested right may not be destroyed by amendment of the corporate charter as to dividends accrued up to the time of the adoption of such an amendment. In reversing the holding of the Chancery Court, Kent County, in *Keller et al. v. Wilson & Co., Inc.*, 180 A. 584, (The Corporation Journal, October, 1935, page 6), where it was held that arrears of cumulative dividends might be abolished by amendment, the Delaware Supreme Court said: "Specifically, the questions to be determined arise under the amendment of section 26 of the General Corporation Law (Delaware Laws, Vol. 38, Ch. 91, sec. 3) and the questions are, first, whether the State under its reserved power, may authorize a corporation, created by it at a time when the law, as then existing, did not permit the abrogation of dividends on cumulative preferred stock accrued through passage of time, to abolish such dividends by virtue of a statute passed after the creation of the corporation and the issuance of such stock; and, second, conceding the power of the State to enact such law, whether the statute should be construed to operate retrospectively."

The court pointed out that a vested right may not be destroyed, and asked: "What is the character of the right of a holder of cumulative preferred stock in a going concern as to which stock dividends have accrued through lapse of time? Is the right, in a real sense, a vested right, or is it a defeasible right, subject to destruction by corporate action under subsequent legislation?" "While many interrelations of the State, the corporation, and the shareholders may be changed, there is a limit beyond which the State may not go. Property rights may not be destroyed; and when the nature and character of the right of a holder of cumulative preferred stock to unpaid dividends, which have accrued thereon through passage of time, is examined in a case where that right was accorded protection when the corporation was formed and the stock was issued, a just public policy, which seeks the equal and impartial protection of the interests of all, demands that the right be regarded as a vested right of property secured against destruction by the Federal and State Constitutions.

"We are of opinion, therefore, that the amendment of the corporate charter, in so far as it assumed to destroy the rights of the complainants to dividends accrued upon their stock up to the time of the accomplishment of the amendment, is null and void. Accordingly, the arrears of such dividends accumulated upon their stock must be paid to them before distribution may be made to the holders of the common stock."

In construing Section 26 and holding that it ought not to have a retroactive effect, the court remarked:

"Section 26 of the General Corporation Law is the section authorizing amendments of corporate charters. It authorizes nothing more than it purports to authorize, the amendment of charters. The cancellation of cumulative dividends already accrued through passage of time is not an amendment of a charter. It is the destruction of a right in the nature of a debt, a matter not within the purview of the section. The cancellation of the right to such dividends is foreign to the design and purpose of the section. The effect of the charter amendment, in so far as it concerns the status of the shares and the rights of the owners, speaking from the time of its accomplishment, is not denied by the complainants; but there is nothing in the language of the section, as amended, which compels a retrospective operation. The rights of cumulative preferred shareholders to the stipulated dividends accrue to them by virtue of the contract. That right exists and persists. When the necessary corporate action, under the amended statute conferring the power is taken, the status of the shares may be changed, and the right thereafter to claim the dividends as originally stipulated may be cancelled, but the amended statute under the general rule of construction, ought not to have a retroactive effect." *Keller et al. v. Wilson & Co., Inc.*, Delaware Supreme Court, November 10, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 164372. Terry & Terry of Dover, Abraham L. Pomerantz and Abraham Marcus of New York City, for appellants. Hugh M. Morris and Edwin D. Steel, Jr., of Wilmington, Delaware, for appellee.

Dispute over possession of stock certificate. In this case, involving conflicting claims to certain shares of complainant's capital stock, the Court of Chancery applies the equitable rule that where two innocent persons have been placed in a situation where a loss must be borne by one of them, it falls on the one who first trusted the wrongdoer and put in his hands the means of inflicting the loss. A claimant who had tendered to complainant for transfer a certificate received in satisfaction of a debt, free of notice of other claims, is sustained against another claimant. The latter held a certificate in the name of the same debtor but in another company, exchangeable for the certificate in dispute. He had held his certificate for a number of years without any attempt to effect the exchange, a circumstance which aided the debtor in bringing about the issuance of the disputed certificate. *Delaware-New Jersey Ferry Co. v. Leeds et al.*, 186 A. 913. Paul Leahy (of Ward & Gray) of Wilmington, for complainant. Charles F. Richards of Wilmington, for Delaware Mortgage Investment Co. David J. Reinhardt, Jr., of Wilmington, for Samuel P. Leeds.

Minnesota.

Sale of entire assets of Minnesota corporation upheld. The charter of defendant Minnesota company, of which plaintiff was a stock-

holder, expired April 13, 1933. Immediately prior to the expiration, the board of directors of defendant, with the consent and authorization of its stockholders other than plaintiff, sold all of the defendant's assets to a Delaware corporation of the same name as defendant company, organized by stockholders of the latter, in consideration of all of the stock of the Delaware corporation and its assumption of all of the liabilities of the Minnesota corporation. The stock of the Delaware company was, at the request of the Minnesota corporation, directly issued to the stockholders of the Minnesota company in proportion to their holdings therein, except that plaintiff refused to accept his proportionate share. He brought this action in an endeavor to have the transfer of assets declared invalid and to compel the Delaware corporation to transfer them back to the Minnesota company, which he sought to have liquidated and dissolved in a receivership.

The Supreme Court of Minnesota observed that April 13, 1933, the expiration date of defendant's charter, was "one of the low points, if not the lowest point, of the depression in values throughout the United States. We take judicial notice that market prices were subnormal." Finding that the Minnesota corporation's financial position was such that liquidation by dissolution would have resulted in a heavy sacrifice, the court refused to apply the rule that a going concern cannot make a sale or transfer of all of its assets against the protest of any stockholder, saying: "It could not be said to be a going concern in the ordinary sense. Certainly the corporation was not prosperous, and it was confronted with liquidation at the nadir of the depression or a sale such as was made. No business man in his senses, handling his own affairs, would have taken any other course than that which defendants took." Finding, also, that plaintiff was treated in good faith exactly as all other stockholders were treated, the court refused to disturb a judgment for the defendants in the lower court. *Hill v. Page & Hill Co. et al.*, 268 N. W. 705. Stinchfield, Mackall, Crounse, McNally & Moore and Floyd E. Nelson, of Minneapolis for appellant. Kingman, Cross, Morley, Cant & Taylor of Minneapolis, for respondents.

Mississippi.

Corporate entity not disregarded where two subsidiaries occupied the same offices and had practically the same officers and directors. Two companies, of which appellant was one, which were the subsidiaries of a Pennsylvania parent company, had offices in the same building, used the same office facilities for the purpose of economy and had practically the same officers and directors. They were, however, separate corporations, each doing a separate business. Appellee, the defendant below, sought to recoup from appellant, losses sustained in connection with an order which he had given to and which had been filled by the other subsidiary, which was not a party to this suit. This recoupment the court denies, holding that, in the

absence of a showing to the contrary, it must be presumed that the two corporations had separate existences. *James B. Berry Sons' Co., Inc. v. Owens,* 169 So. 685. R. H. & J. H. Thompson of Jackson, for appellant. W. Harold Cox of Jackson, for appellee.

New Jersey.

Officer of dissolved corporation held not subject to penalties for failure to file report subsequent to dissolution. Plaintiff, a judgment creditor of a dissolved corporation of which defendant had been an officer, sued defendant, under 2 Comp. Stat., p. 1612, Sec. 26, as being liable for the debts of the corporation for failure to file, after the dissolution, a certificate with the Secretary of State giving data concerning his corporation's capital stock. As Section 143 of the Corporation Act makes it a misdemeanor for any person to exercise or attempt to exercise any powers under the charter of a corporation dissolved by proclamation of the governor, the First District Court, Monmouth County, holds defendant not required to file the report and therefore not subject under the statute to liability for the corporate debts. *Metropolitan Casualty Insurance Company of New York v. Brooker,** 185 A. 926. William Wackenhuth of Newark, for plaintiff. Ezra W. Karkus of Keyport, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service, New Jersey volume, page 505.**

Ohio.

Separate entities of parent and subsidiary not disregarded. A mercantile corporation caused a separate subsidiary realty corporation to be formed to acquire its realty holdings so that the parent company might confine itself to the mercantile business. The subsidiary took an 85-year lease of certain real estate and subleased it for a term of 10 years to the parent company, which moved from the premises before the end of that term but paid the stipulated rent to the subsidiary for the remainder of the term. This action was brought against the parent as well as the subsidiary because of the failure of the subsidiary to pay the rents under the lease. The plaintiff sought to hold the parent company liable on the ground that the separate entities of the parent and subsidiary should be disregarded and the parent held liable for the obligations of the subsidiary because the latter was controlled by the parent through stock ownership. The parent and subsidiary had directors and officers in common. It was held that the ownership of stock by a parent corporation does not make it liable for the obligations of its subsidiary where, as in this case, there has been no fraud or illegality. The fundamental rule that stockholders are not liable for corporate obligations applies to a parent corporation holding stock of a subsidiary. The separate corporate entity should not be disregarded in the absence of proof showing not only excessive control over the subsidiary but the actual exercise of that control in such a man-

ner as to defraud or wrong the complainant. The organization of a corporation for the purpose of avoiding personal responsibility does not in itself constitute fraud justifying the disregard of the corporate entity. *North et al. v. Higbee Co. et al.*, 3 N. E. (2d) 391. Day & Day, Horwitz, Kiefer & Harmel, and Donald W. Kling, of Cleveland, for certain appellees. Tolles, Hogsett & Ginn, of Cleveland, for appellant, Higbee Co. McKeehan, Merrick, Arter & Stewart, and L. C. Wykoff, of Cleveland, for appellee receiver. L. F. Laylin, of Columbus, for appellees, Superintendent of Banks, and Union Trust Co., trustee.

Pennsylvania.

Refusal of directors to distribute proceeds of life insurance policy as a dividend upheld. A stockholder seeks a decree requiring appellant corporation to declare and pay a dividend to its shareholders, a request to that effect having previously been made by him to the directors, who had concluded that the best interests of the corporation required them to deny it. Subsequently at an annual meeting, stockholders of 1,133 out of 1,350 shares outstanding had voted in favor of a resolution approving the directors' action, no stockholders voting against the resolution. There was no question of fraud or bad faith on the part of the directors, and the court merely considered whether the directors acted with discretion in refusing the request or whether they had abused the discretion vested in them. The Pennsylvania Supreme Court holds there was no such abuse of discretion. The principal asset available to the directors for the possible declaration of a dividend was the proceeds of a life insurance policy received by the corporation as a result of the death of one of the company's incorporators and founders, under a policy in which the corporation was named the beneficiary. The directors are upheld in withholding this sum for future contingencies and for operating purposes. It did not represent "income" to the corporation and, having been created and received to tide the corporation over in its affairs in the event of the incorporator's death to minimize the effect of his loss on the business, the use of the money for that purpose by the directors appeared a proper policy in the view of the court. *Jones v. Motor Sales Company of Johnstown et al.*, 185 A. 809. George W. Griffith, Phillip N. Shettig and Thomas A. Swope, of Ebensburg, for appellants. Charles S. Evans of Ebensburg, for appellee.

Shareholder dissenting to building and loan merger agreement held barred by statutory limitation from establishing claim. Plaintiff, a shareholder in a building and loan association, dissented to the merger of his association with another association which resulted in the formation of the defendant. He brought this action more than a year after the merger agreement went into effect and sought to recover the valuation placed upon his shares under the terms of that agreement. The Pennsylvania Supreme Court refers to an Act of May 15, 1933, P. L. 794, barring shareholders in building and loan

associations which became parties to mergers or consolidations prior to July 3, 1933, as occurred in this instance, from exercising any rights as a nonassenting or as a dissenting shareholder unless an action to enforce such rights had been commenced either within six months after the effective date of the act or within six months after the date upon which the merger or consolidation became effective. Plaintiff having delayed more than the six months in instituting this action, a recovery was denied. *Gorges v. Greater Adelphi Building & Loan Association,* 185 A. 815. Emanuel Moss and Moss & Moss, of Philadelphia, for appellant. Frank A. Simons and Bender & Rubin, of Philadelphia, for appellee. Charles J. Margiotti, Attorney General, and Sylvan H. Hirsch and Herbert P. Sundheim, Sp. Deputy Attys. General, for Secretary of Banking, amicus curiae.

Utah.

Promoter's contract held not binding upon corporation subsequently organized. Plaintiff seeks to recover under a contract with a promoter, entered into prior to the organization of a mining corporation, whereby plaintiff was to receive 120,000 shares of the corporation to be formed in exchange for conveying certain mining lands to the corporation. When the incorporation was effected, the conveyance was made and plaintiff received 60,000 shares of the stock, which was the amount for which he had subscribed. He now endeavors to obtain the additional 60,000 shares. The Supreme Court of Utah mentions the general rule of law that promoters who undertake to organize a corporation cannot bind the corporation by their contracts and agreements made before the corporation is organized, but that the corporation after incorporation may accept and adopt such a contract which thereupon becomes its own contract, which may be enforced by or against it. The court finds no such acceptance or adoption of the contract and holds plaintiff to be limited to his contract with the corporation itself as evidenced by the articles of incorporation, wherein plaintiff had agreed to convey his interest in the mining claims for 60,000 shares to which he had subscribed. *Murry v. Monter et al.,* 60 P. (2d) 960. H. A. Smith of Salt Lake City, for appellants. C. N. Leatherbury of Eureka, for respondents.

Foreign Corporations

Idaho.

Rehearing granted in "doing business" case. A petition for rehearing was granted on September 30, 1936, in *John Hancock Mutual Life Insurance Company, respondent, v. Z. L. Girard et al., defendants, Bertha C. Bressler, appellant,* decided by the Idaho Supreme Court, July 22, 1936. (The Corporation Journal, November, 1936, page 254.) In that case it was held that an unlicensed foreign insurance company, doing no insurance business in Idaho, but which invested considerable sums in mortgages on Idaho real estate by acting through

THE TRANSFER OF SECURITIES

IN THESE days the transfer of corporate securities is no simple or informal matter. Experience, knowledge, system must be utilized in the handling of every small detail.

Sometimes the officers of a newly-organized corporation, relying on the fact that the stock is closely held, or that the business is small and little activity in the stock can be expected, decide to handle the transfer of the corporation's securities within their own organization.

But stockholders may die—and the transfer of securities held in the name of a decedent or executor is dangerous business for the inexperienced . . . or the company's development may take a new direction requiring some change in corporate structure—and carelessly-kept stock books, harmless in the early days, turn out to be a skeleton in the corporate closet.

The Corporation Trust Company, with thirty-eight years' experience in the transfer and registration of the securities of corporations, will be glad to discuss with you the advantages to be gained by appointment of an able transfer agent.

a foreign corporation licensed in that state, was to be regarded as an investment company doing business so as to be required to qualify in Idaho. The argument was heard in November.

New York.

Shareholders' bill in equity dismissed for lack of jurisdiction over the corporation, an indispensable party. Shareholders filed a bill in equity against their corporation and six of its directors in the United States District Court for the Eastern District of New York. However, the corporation was a New Jersey company without any office in that District and it was not established that the directors were residents of New York. The Circuit Court of Appeals, Second Circuit, affirms a decree dismissing the suit because of lack of jurisdiction over the corporation, saying that it has been the law for over sixty years that the corporation is an indispensable party in such cases. "The reason is apparent; the decree must protect the directors against any further suit by the corporation; and this will not be true unless it be a party to the suit." *Philipbar et al. v. Derby et al.*, 85 F. (2d) 27. Samuel Zirn of New York City, for appellants. Strange, Myers, Hinds & Wight, (Frank C. Mebane, Jr. and Roger Hinds, of counsel), of New York City, for appellee.

Injunctions granted because of similarity in corporate names. In two recent cases defendants were restrained by the United States District Court, Southern District of New York, from using names similar to those of plaintiff corporations. In one, Philmore Dress Corporation, a Massachusetts company, sought relief against Philmore Dress Co., Inc., a New York corporation, the latter organized later than the former, both being engaged in the sale of the same type of goods. It was held that the plaintiff had an absolute right in its name which it was entitled to have protected from invasion. It was said that "even though the defendant, preceding the adoption of its name did not know of the existence of the plaintiff, that would be immaterial." *Philmore Dress Corporation v. Philmore Dress Co., Inc.*, decided July 22, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 162663. Hyman Chipkin, for the plaintiff. Jerome D. Oltarsh, for the defendant. Henry W. Hainick, of counsel. To the same effect is the holding of the same court in *Crowe & Co., Inc. v. T. L. Crowe & Co., Inc.*, decided August 12, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 163197.

Virginia.

Mere maintenance of office in state by foreign corporation, without delegation of an essential corporate function to an agent, is not doing business so as to render corporation subject to effective service of process. In an action instituted against defendant by service of process upon an alleged agent, defendant foreign corporation was successful in having service set aside because its activities within

the state were limited to solicitation of orders by salesmen, orders being sent to Massachusetts, where they were accepted and filled, or rejected, no salaries being paid within the state, as the salesmen were on a strictly commission basis. The agent on whom process had been served supervised the other salesmen as a District Manager. He operated an athletic goods company in the state and had, without consulting defendant, listed its name in the local telephone and city directories, as well as placing his name on the window of the office of his own company. No part of the rent was paid by defendant. The Supreme Court of Appeals, in reaching the conclusion that such activities did not amount to the doing of business so as to render defendant amenable to the service of process, stated the rule as follows: "A soliciting agent, in this state, for a foreign corporation, may maintain an office or place of business on which the name of such corporation appears on the doors and windows, of such place, without making the corporation amenable to service of process; but if an essential corporate function, even though slight, is delegated to such agent, or if such agent, with the permission of the corporation, exercises such authority at such office or place of business, then the corporation is amenable to process served upon such agent." *Tignor v. L. G. Balfour & Co.*,* 187 S. E. 468. R. Hugh Rudd of Richmond, for plaintiff in error. Tucker, Bronson, Satterfield & Mays of Richmond, for defendant in error.

* The full text of this opinion is printed in **The Corporation Tax Service, Virginia volume, page 154.**

Taxation

Federal.

Federal trustees under section 77B held required to pay city taxes upon property in their custody. First mortgage bondholders petitioned the United States District Court, District of Maine, Southern Division, for an order directing trustees, acting under section 77B of the Bankruptcy Act, to pay a balance of city taxes for the year 1935, assessed on property under the management of the trustees, out of rents collected by the trustees and in their hands, the legality of the assessment not being questioned. The court found no bar to the payment of the taxes in section 64a of the Bankruptcy Act, as amended May 27, 1936, which governs payment of such taxes, and held the payment of the taxes not only not prohibited but absolutely required by law, noting that: "Since the passage of the amendment to section 64, * * * Congress, by Act of June 18, 1934 (28 U. S. C. A. § 124a), has made it still more clear that business conducted by Federal trustees is subject to all local taxes. 'Any receiver, liquidator, referee, trustee, or other officers or agents appointed by any United States court who is authorized by said court to conduct any business, or who does conduct any business, shall, from and after June 18, 1934, be subject to all State and local taxes applicable to such business the same as if such business was conducted by an

individual or corporation.'" *In re Preble Corporation*, 15 F. Supp. 775. William B. Nulty of Portland, Me., for petitioners. J. D. Clifford, Jr., of Portland, Me., and Joseph B. Jacobs of Boston, Mass., for debtor corporation.

Iowa.

Gross receipts tax provisions of Iowa Chain Store Tax Act of 1935 held unconstitutional. On November 9, 1936, the Supreme Court of the United States in a per curiam opinion affirmed the decrees of the United States District Court for the Southern District of Iowa in *The Great Atlantic and Pacific Tea Company et al.*, and two companion cases (Nos. 13, 14 and 15), holding unconstitutional the gross receipts tax provisions of the Iowa Chain Store Tax Act of 1935. (For digest of the lower court opinion in the above mentioned case, see The Corporation Journal, February, 1936, page 110.)

Michigan.

Sales in interstate commerce held not subject to the Michigan Sales Tax; sales tax paid on goods recaptured under conditional sales contract held not recoverable. The Michigan Supreme Court holds that the plaintiff company is not subject to the payment of the Michigan Sales Tax where (1) Michigan customers send mail orders to plaintiff in Illinois for acceptance, which are filled by shipments made direct to the customers from Illinois, such shipments being held to constitute interstate commerce; (2) where plaintiff's store in Michigan received payment for orders which were sent to the manufacturer in another state for acceptance, filling and shipment direct to the Michigan customer, such shipments also being interstate. A refund sought by plaintiff of the tax paid on goods sold on cancelled conditional sales contracts, where there had been a recapture of the merchandise, was denied. With reference to sales in which payment was made partly in cash and partly in used merchandise, the court affirms a ruling of the lower court to the effect that the gross proceeds taxable consist of the money received, plus the amount allowed the purchaser for the used article. *Montgomery Ward Co. v. Fry*,* Supreme Court of Michigan, October 5, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 164332; 269 N. W. 166.

* The full text of this opinion is printed in **The Corporation Tax Service, Michigan volume, page 575-65.**

Sales of men's clothing on order in interstate commerce held not subject to sales tax; later alterations regarded as incidents of delivery. Plaintiff, an Illinois manufacturer of men's clothing, maintained an office in Michigan where samples of cloth and clothing were displayed. Orders were taken there and forwarded to Illinois for acceptance, delivery of the finished material being sent either direct to the customer or to the Michigan office for delivery. The

Michigan Supreme Court said: "Such a sale is not made in Michigan but in Illinois, and, being interstate commerce, cannot be taxed by the state of Michigan." "That some alterations are made in Michigan upon the finished garments does not change the rule." "They were incidents of delivery, which is a part of interstate commerce." *J. B. Simpson, Inc. v. O'Hara et al.,** 268 N. W. 809. David H. Crowley, Atty. Gen., and Edmund E. Shepherd and Arthur T. Iverson, Asst. Attys. Gen., for appellants. Butzel, Levin & Winston, (Chris M. Youngjohn, of counsel) of Detroit, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Michigan volume, page 575-61.**

The mortgage tax applies to mortgages held by a foreign insurance company. Plaintiff, a foreign life insurance company, sought by mandamus to compel defendant register of deeds to record a mortgage held by plaintiff, without the payment of a tax under the mortgage tax law. Plaintiff had been admitted to do business in the state prior to the enactment of the mortgage tax law, and claims exemption from such a tax by reason of a general exemption from the payment of taxes appearing in the provisions of the law imposing a gross premiums tax upon it, which read: "Such specific taxes (on gross premiums) shall be in lieu of all other taxation, whether state or local, excepting from real estate owned by such companies within this state and securities deposited herein, unless exempted under the general tax laws of the state." There was no exemption of mortgages of companies such as plaintiff mentioned in the later-enacted mortgage recording tax law. The Supreme Court of Michigan finds an irreconcilable conflict in the two tax statutes, and, in holding that the writ of mandamus should be denied and plaintiff required to pay the mortgage tax, decided that the law last enacted should prevail, saying: "We think it clear that the Legislature, in enacting the mortgage tax law, intended to and did cover the whole situation and left no outstanding tag ends of exemption under any other statute to be read into it." *Metropolitan Life Insurance Co. v. Stoll, Register of Deeds,** 268 N. W. 763. Bulkley, Ledyard, Dickinson & Wright (Edward P. Wright and Edgar C. Howbert, on the brief) of Detroit, for plaintiff. Sweetman G. Smith, Asst. Pros. Atty., of Detroit (David H. Crowley, Atty. Gen., and Edmund E. Shepherd and T. Carl Holbrook, Asst. Attys. Gen. of counsel) for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service, Michigan volume, page 575-63.**

North Carolina.

Tangible property of foreign corporation held taxable where it is used in the conduct of its business. The North Carolina Supreme Court holds that motor boats owned by plaintiff foreign corporation and used by it in the conduct of its business at defendant city were

subject to assessment by the city and to taxation at the current ad valorem rates applicable to all property, real and personal, within the city. "The *situs* of personal property for purposes of taxation," said the court, "is ordinarily the domicile of the owner. Where, however, the owner maintains said property in a jurisdiction other than that of his domicile, in the conduct of his business within such jurisdiction, the *situs* of said property for purposes of taxation is its actual *situs*, and not that of his domicile. The exception to the general rule is now universally recognized by the courts, both Federal and state." *The Texas Company v. City of Elizabeth City,** North Carolina Supreme Court, September 23, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 164451. M. B. Simpson and R. Clarence Dozier for plaintiff. J. W. Jennette and J. H. Hull for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service**, North Carolina volume, page 2232.

Utah.

Where small sales are made and retail sales tax due is a fractional part of a cent, vendor is required to pay the tax on the aggregate amount of such sales, and actual collection of tax from vendee under such circumstances is a matter of adjustment between vendor and vendee. Under Laws of Utah, 1933, Chapter 63, as amended, a tax is imposed "upon every retail sale of tangible personal property made within the state of Utah equivalent to two (2) per cent of the purchase price paid or charged." Provision is made that "the vendor may, if he sees fit, collect the tax from the vendee, but in no case shall he collect as tax an amount (without regard to fractional parts of one cent) in excess of the tax computed at the rates prescribed by this act." A large percentage of plaintiff's business was represented by small sales of less than 50 cents each, and plaintiff objected to the payment of any tax upon the aggregate amount of such sales. The Supreme Court of Utah rules that, as there is no exemption provided in the statute where the amount of the sale is less than 50 cents, the 2% rate attaches to every sale, and the vendor is responsible for the collection of the tax on such amounts. "We think," said the court, "the legislature intended to leave the adjustment of the 'fractional parts of one cent' to the good sense, fairness, and judgment of the vendor and the vendee." "That phrase is practical and not legal. The people apparently have adopted the common sense solution of the vendor absorbing the minor fraction of one cent and the vendee paying when the sales tax upon the rate imposed passed to the major part of the fraction of a cent." *W. F. Jensen Candy Company v. The State Tax Commission of Utah,** Supreme Court of Utah, October 20, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 165103.

* The full text of this opinion is printed in **The Corporation Tax Service**, Utah volume, page 7664.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

DELAWARE. Docket No. 449. *McLean v. Goodyear Tire & Rubber Co., Inc.*, 85 F. (2d) 150. (The Corporation Journal, November, 1936, page 247.) Involves question of disregard of the corporate entity—liability of Delaware subsidiary sales company for latent defects in tire manufactured by Ohio parent company. **Appeal filed October 9, 1936. Writ of certiorari denied November 23, 1936.**

IOWA. Docket Nos. 13, 14, 15. *Valentine et al. v. The Great Atlantic & Pacific Tea Co. et al.*, 12 F. Supp. 760. (The Corporation Journal, February, 1936, page 110.) Validity of gross receipts tax provisions of Iowa Chain Store Tax Act. **Probable jurisdiction noted April 13, 1936. Argued October 14, 1936. Decrees of United States District Court for the Southern District of Iowa affirmed November 9, 1936; opinion, per curiam.**

TEXAS. Docket No. 439. *Musser v. Sheppard*, 92 S. W. (2d) 219. (The Corporation Journal, June, 1936, page 208.) Involves validity of "use" or "consumption" feature of Texas cigarette tax. **Appeal filed October 6, 1936. Motion of appellee to dismiss the appeal granted and appeal dismissed for want of a final judgment, November 9, 1936.**

VIRGINIA. Docket No. 40. *The Atlantic Refining Company v. Commonwealth of Virginia*, 183 S. E. 243. (The Corporation Journal, March, 1936, page 136.) Validity of foreign corporation entrance fee. **Appeal filed April 24, 1936. Jurisdiction postponed to hearing of case on its merits, May 18, 1936. Argument concluded October 22, 1936.**

WASHINGTON. Docket No. 418. *Henneford et al. v. Silas Mason Co., Inc. et al.*, U. S. District Court, Eastern District of Washington, August 3, 1936; 15 F. Supp. 958. (The Corporation Journal, November, 1936, page 258.) Involves validity of State of Washington "Compensating Tax." **Appeal filed September 30, 1936; probable jurisdiction noted October 19, 1936. Motion to advance argument submitted by counsel for appellants, October 26, 1936. Motion granted and case advanced for argument on Monday, December 14, 1936.**

*** Data compiled from CCH U. S. Supreme Court Service, 1936-1937.**

Regulations and Rulings

KENTUCKY—The Attorney General of Kentucky, in an opinion to the Commissioner of Revenue has ruled that a Delaware holding company, not authorized to do business in Kentucky, which held monthly meetings of its board of directors in Louisville, Kentucky, at which its policies and those of a number of subsidiaries were determined, was subject to payment of the Kentucky Annual License Tax. (Full text of opinion is printed in the Kentucky CT Service, page 1508.)

LOUISIANA—Regulations have been issued by the Supervisor of Public Accounts under the Louisiana Luxury Sales Tax Act. (Full text printed in the Louisiana CT Service, page 6475.)

MARYLAND—The Attorney General of Maryland has ruled that Section 139A of Article 81, as enacted by Chapter 10, Acts of 1936, providing for a special franchise tax on corporations doing business in Maryland on January 1, 1936, is retroactive in effect and a domestic ordinary business corporation doing business on January 1, 1936, is liable for the tax even though the corporation was dissolved prior to the enactment of the tax. (Ruling of Attorney General to State Tax Commission. Full text printed in the Maryland CT Service, page 1514.)

NEW YORK—The Attorney General in an opinion to the State Superintendent of Insurance, has ruled that the acquisition of real property upon foreclosure of a mortgage in the state by a foreign insurance company, which does no insurance business in the state, is not "doing business" in the state for franchise tax purposes. (Full text of opinion printed in the New York CT Service, page 1101.)

TENNESSEE—The Attorney General of Tennessee ruled in a recent opinion that if a foreign corporation carries a warehouse stock in Tennessee, from which shipments are made to points in Tennessee and elsewhere, the corporation is doing business in Tennessee and is required to domesticate. Domestication was held necessary even though the shipments to points within Tennessee were comparatively light. (Full text printed in the Tennessee CT Service, page 507.)

WISCONSIN—With reference to the Privilege Dividend Tax imposed by Chapter 505, Laws of 1935, a ruling of the Federal Treasury Department, Bureau of Internal Revenue, I. T. 3002, XV-35-8264 (p. 4), is to the effect that the "privilege dividend tax is an excise tax imposed upon the stockholder receiving the dividend, who may deduct the amount of the tax in his Federal income tax return. The stockholder, however, should report in his return the full amount of the dividend, including the tax withheld." (Full text of ruling is printed in the Wisconsin CT Service, page 1906, and in the Standard Federal Tax Service, 1936, page 8273.) The privilege dividend tax was held constitutional by the Wisconsin Supreme Court in *State ex rel. Froedtert Grain and Malting Co., Inc. v. Tax Commission of Wisconsin*, 265 N. W. 672; rehearing denied, 267 N. W. 52. (The Corporation Journal, April, 1936, page 162 and June 1936, page 209.) There was no appeal taken in this case to the Supreme Court of the United States.

Some Important Matters for December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Service* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details of the Service from any office of The Corporation Trust Company.

ALABAMA—Annual Application Fee for permit to do business due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report published and filed between January 1 and January 20.—Domestic Corporations.

GEORGIA—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due on or before February 1.—Domestic Corporations.

NEW JERSEY—Annual Franchise Tax Report due on or before first Tuesday in February.—Domestic Corporations.

NEW YORK—Second installment of Annual Franchise Tax due on or before January 1.—Domestic and Foreign Business Corporations other than real estate and holding companies.

OHIO—Report to Industrial Commission due during January.—Domestic and Foreign Corporations.

Retail Sales Tax Information Report due on or before January 31.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

UNITED STATES—Fourth Instalment of Income Tax due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VERMONT—List of Stockholders due on or before January 31.—Domestic and Foreign Corporations.

WEST VIRGINIA—Quarterly Gross Income and Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, and of the Supreme Court of New Mexico in Silva v. Crombie & Co. —two decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages, for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1935.

New Deal Laws of Importance to Corporations. Contains complete text of Securities Act of 1933 as amended by Title II of the Securities Exchange Act of 1934, all matters in the original act omitted in the 1934 amendments being set in brackets, and all new matters added by the 1934 amendments being set in italics; complete text of the Securities Exchange Act of 1934; and complete text of the amendments approved June 7, 1934 to the Bankruptcy Act providing for corporate reorganizations.

The New Bankruptcy Law. Contains, first, the eleven-word amendment approved June 18, 1934 to the original amendment to the Bankruptcy Act approved June 7, 1934 (and published in our pamphlet New Deal Laws described above); second, two examples of voluntary petitions for reorganization under the new provisions; and third, two examples of petitions under the new provisions for appointment of trustees (reorganization sought).

The High Cost of Whistles for Corporations. Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

Special Report. The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

What Constitutes Doing Business. (Revised to April 15, 1934.) A 198-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a Form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

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